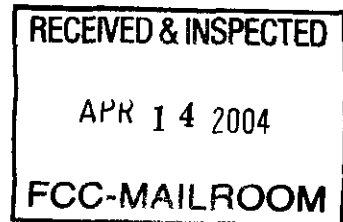




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April 9, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **RM-10865/DA No. 04-700**
Comments on the CALEA Petition for Rulemaking

Dear Secretary Dortch:

Robert M. Morgenthau, the District Attorney of the County of New York, submits these comments on the U.S. Department of Justice's ("DOJ"), Federal Bureau of Investigation's ("FBI"), and U.S. Drug Enforcement Administration's ("DEA") Joint Petition ("Petition") filed on March 10, 2004 before the Federal Communications Commission ("FCC") requesting that the FCC resolve, on an expedited basis, various critical issues arising from the implementation of the Communications Assistance for Law Enforcement Act ("CALEA")

It is vital, and consistent with Congress's intent in enacting CALEA, that the FCC initiate a rulemaking proceeding and adopt the rules proposed in the Petition. Congress enacted CALEA in 1994 to ensure that law enforcement has the ability to continue to conduct authorized wiretaps in the future as technologies change. Since 1994, many new communications technologies have arisen, including broadband internet access, voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other packet mode services. These services, currently used by millions of American citizens, pose a great challenge to state and local law enforcement in that many such providers of these communications services have failed to adopt currently available CALEA intercept solutions voluntarily. As a result, law enforcement has been thwarted in its attempts to implement court-authorized surveillance. In short, voluntary industry compliance with CALEA does not work.

Furthermore, state and local law enforcement do not have the financial or personnel resources to develop costly *ad hoc* surveillance solutions for each new communications service, nor should they have such an obligation under the current law. Indeed, Congress, through CALEA, expressly passed the burden of designing and paying for such surveillance solutions onto the telecommunications carriers themselves, for all equipment, services, and facilities deployed after January 1, 1995.

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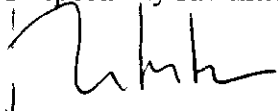
Marlene H. Dortch, Secretary

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Given the significance of the issues discussed above, it is important that the FCC act promptly upon the Petition and commence a rulemaking proceeding adopting the DOJ's, DEA's and FBI's proposed rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Morgenthau', written over a horizontal line.

Robert M Morgenthau